

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 11,243
)
Appeal of)

INTRODUCTION

The petitioner appeals a determination by the Department of Social Welfare (DSW) that her ANFC grant should be closed because no children are present in her home.

FINDINGS OF FACT

1. The petitioner has one minor child who until April of 1992, was in her custody. At that time, the child was removed from her care by court order and placed in the custody of the Department of Social and Rehabilitation Services (SRS).

2. At the time of the child's removal, the petitioner was receiving ANFC on his behalf. She has no other children.

3. Shortly thereafter, DSW learned that the child was no longer living with the petitioner as a result of application made by SRS for benefits on behalf of the child.

The petitioner was called into the office for an interview to discuss the situation where she confirmed the child's absence and told her worker that she did not expect the child to return in the next thirty days.

4. Based on that information, DSW sent the petitioner a notice that her grant would close as of May 1, 1992. The notice stated that the closure was due to the fact that she no longer had eligible children living with her. The petitioner made a timely appeal of that decision and has continued to receive her regular monthly ANFC grant.

5. The appeal was originally set for hearing on June 10, 1992 but was rescheduled once at the Department's request and once at the petitioner's request. When the hearing was finally held on July 29, 1992, the child was still in SRS custody.

6. Since the time of her child's removal from her home, the petitioner has been trying to meet conditions placed on her by the Court as a prerequisite for his return.

Among those conditions is a requirement that the petitioner complete a residential alcohol treatment program. She had completed such a four week program just prior to her hearing. The petitioner fears, however, that without her ANFC grant she will be unable to maintain her home and will further jeopardize her chance of "getting back on her feet" and regaining custody of her child.

7. While the petitioner is hopeful that her child will be returned to her soon, she does not disagree that SRS and the Court were initially considering retaining custody for a six to twelve month period during which the petitioner was required to show that the conditions which led to the

custody change were significantly improved. She believes that a further hearing will be held in late August of 1992, and has had conversations with her attorney which have led her to believe there is some hope for a return of her child in the next month or so.

ORDER

The Department's decision is affirmed.

REASONS

Under DSW's regulations, eligibility for ANFC requires that the dependent child reside with a parent or other relative caretaker. W.A.M. § 2302. The Department requires recipients to notify the district director of any "physical separation of the relative and child(ren) which continues or is expected to continue for thirty days or more". W.A.M. § 2224. If the child and the caretaker relative are separated due to physical or mental illness requiring hospitalization care outside of the home, ANFC may continue for a period of up to six months if an individual, not a relative, temporarily steps in to care for a child. W.A.M. § 2224.

The regulations do not specifically allow for the continuation of benefits to that child if the child is temporarily cared for by the state pursuant to a juvenile court order. The regulations do allow children in the care of the state to receive welfare benefits for themselves. W.A.M. § 2302.1. There is no regulation which would allow an adult who is not living with and providing care for a

child to receive ANFC benefits for herself alone. In fact, the regulations specifically state that a parent can be found eligible only if she "lives in the same household with one or more eligible biological, step or adopted children".

W.A.M. § 2242.2.

The petitioner's current predicament is indeed lamentable. The stress of losing her income and perhaps her housing is certainly not going to be a positive contribution to her struggle to attain sobriety and regain her child. However, the Department is correct in its decision that it cannot continue to pay the petitioner for the care of a child who has not lived with her for over four months and whose return to the household does not appear to be imminent. This is especially true when SRS, the court appointed custodian, is already receiving support funds on behalf of the child.

The petitioner should be aware that when her ANFC ceases (which most likely will occur in mid-September) she can apply for General Assistance through the Department. She can also reapply for ANFC even before her child returns to her home if she can show that he will return within the next thirty days. W.A.M. § 2302. In addition, if the petitioner feels she cannot work due to her alcoholism, she should apply for SSI through the Social Security Administration. Finally, the petitioner, who has a court appointed attorney in the juvenile case, is urged to discuss with him or her what obligations SRS itself may have to

assist her financially in her attempts to rehabilitate herself and be reunited with her child.

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